

RECIPROCAL TRADE

*Agreement and exchange of notes signed at Washington December 20, 1935*¹

Proclaimed by the President of the United States December 28, 1935

Ratified by the Netherlands March 8, 1937

Proclamation and ratification exchanged at Washington April 8, 1937

Entered into force May 8, 1937; articles I–XVI, inclusive, operative from February 1, 1936

*Made inoperative by agreement of October 30, 1947*²

*Terminated December 7, 1962*³

50 Stat. 1504; Executive Agreement Series 100

AGREEMENT

The President of the United States of America and Her Majesty the Queen of the Netherlands, being desirous of improving and extending the commercial relations between the two countries by granting mutual and reciprocal concessions and advantages for the development of trade, have resolved to conclude a Trade Agreement with that object and have appointed their respective Plenipotentiaries, as follows:

The President of the United States of America:

Mr. Cordell Hull, Secretary of State of the United States of America, and

Her Majesty the Queen of the Netherlands:

Mr. Arnold Theodoor Lamping, Director of Trade Agreements,

who, after communicating to each other their respective full powers, found to be in good and due form, have agreed upon the following Articles:

ARTICLE I

The United States of America and the Kingdom of the Netherlands will grant each other unconditional and unrestricted most-favored-nation treat-

¹ For schedules annexed to agreement, see 50 Stat. 1526 or p. 24 of EAS 100. For proclamations relating to allocation of tariff quotas on crude petroleum and fuel oil dated Dec. 12, 1939, Dec. 28, 1940, and Dec. 26, 1941, see 54 Stat. 2451, 54 Stat. 2456, 55 Stat. 1393; EAS 191, 192, 226.

² TIAS 1705, *post*, p. 222.

³ Pursuant to notice of termination given by the United States June 7, 1962.

ment in all matters concerning customs duties and charges of every kind and in the method of levying duties, and, further, in all matters concerning the rules, formalities and charges imposed in connection with the clearing of goods through the customs, and with respect to all laws or regulations affecting the sale or use of imported goods within the country.

Accordingly, natural or manufactured products having their origin in either of the countries shall in no case be subject, in regard to the matters referred to above, to any duties, taxes or charges other or higher, or to any rules or formalities other or more burdensome, than those to which the like products having their origin in any third country are or may hereafter be subject.

Similarly, natural or manufactured products exported from the territory of the United States of America or the Kingdom of the Netherlands and consigned to the territory of the other country shall in no case be subject with respect to exportation and in regard to the above-mentioned matters, to any duties, taxes or charges other or higher, or to any rules or formalities other or more burdensome, than those to which the like products when consigned to the territory of any third country are or may hereafter be subject. The provisions of this paragraph shall not apply to taxes or charges levied in the Netherlands for the purpose of equalizing in some cases the differences in prices existing in the Netherlands and in foreign countries.

Any advantage, favor, privilege or immunity which has been or may hereafter be granted by the United States of America or the Kingdom of the Netherlands in regard to the above-mentioned matters, to a natural or manufactured product originating in any third country or consigned to the territory of any third country shall be accorded immediately and without compensation to the like product originating in or consigned to the territory of the Kingdom of the Netherlands or the United States of America, respectively.

It is understood that so long as and insofar as existing law of the United States of America may otherwise require, the provisions of this Article, insofar as they would otherwise relate to duties, taxes or charges on coal, coke manufactured therefrom, or coal or coke briquettes, shall not apply to such products imported into the United States of America. If the law of the United States of America shall not permit the complete operation of the provisions of this Article with respect to the above-mentioned products, the Kingdom of the Netherlands reserves the right to impose on such products originating in the United States of America, after September 1, 1936, duties or charges other or higher than those imposed on like products originating in third countries, or within fifteen days after the aforesaid date, to terminate this Agreement in its entirety on thirty days' written notice.

ARTICLE II

Articles the growth, produce or manufacture of the United States of America, enumerated and described in Sections A and B of Schedule I⁴ annexed to this Agreement, shall, on their importation into the Netherlands and the Netherlands Indies, respectively, be exempt from ordinary customs duties and monopoly fees in excess of those set forth in the respective Sections of the said Schedule. The said articles shall also be exempt from all duties, taxes, fees, charges or exactions, other than ordinary customs duties and monopoly fees, imposed on or in connection with importation, other than or in excess of those imposed on the day of the signature of this Agreement or required to be imposed thereafter under laws of the Netherlands or the Netherlands Indies, in force on the day of the signature of this Agreement. It is understood that in the application of the aforesaid laws, articles the growth, produce or manufacture of the United States of America shall receive as favorable treatment as that accorded under like circumstances and conditions to like articles of any third country.

With respect to the articles the growth, produce or manufacture of the United States of America enumerated and described in Schedule III annexed to this Agreement, the provisions set forth in the said Schedule shall be applied.

With respect to articles enumerated and described in Section B of Schedule I, the Government of the Netherlands Indies reserves the right to change the ad valorem rates of duty specified in the said Section to specific rates of duty: Provided, That no resulting rate of duty applicable to any such article originating in the United States of America shall be higher than the average specific rate equivalent to the ad valorem rate of duty during the latest practicable six months' period preceding the conversion.

It is understood that an increase in the statistical duties at present levied in the Netherlands shall not be considered contrary to the provisions of this Article provided such duties do not exceed eight florin cents per package on postal importations or two-tenths of one per centum ad valorem on other importations.

ARTICLE III

Articles the growth, produce or manufacture of the Kingdom of the Netherlands enumerated and described in Schedule II annexed to this Agreement, shall, on their importation into the United States of America, be exempt from ordinary customs duties in excess of those set forth in the said Schedule. The said articles shall also be exempt from all duties, taxes, fees charges or exactions, other than ordinary customs duties, imposed on or in connection with importation, other than or in excess of those imposed on the day of the signature of this Agreement or required to be imposed thereafter under laws

⁴ See footnote 1, p. 122.

of the United States of America in force on the day of the signature of this Agreement. It is understood that in the application of the aforesaid laws, articles the growth, produce or manufacture of the Kingdom of the Netherlands shall receive as favorable treatment as that accorded under like circumstances and conditions to like articles of any third country.

ARTICLE IV

The provisions of Articles II and III of this Agreement shall not prevent the United States of America or the Kingdom of the Netherlands from imposing on the importation of any article a charge constituting a compensation for or an equivalent of an internal tax imposed on a like domestic article or on a commodity from which the imported article has been processed or manufactured in whole or in part.

Articles the growth, produce or manufacture of the United States of America or the Kingdom of the Netherlands, enumerated and described in Schedules I and II, respectively, which are or shall be subject on their importation into the other country to a duty, tax or any other exaction, imposed solely as the equivalent of or to compensate for an internal tax or any other exaction imposed on or with respect to the processing of domestic articles, shall continue to be subject to such duty, tax or other exaction on importation only to the extent that such duty, tax or exaction shall be not more than fairly equivalent or compensatory to the internal tax or other exaction imposed on or with respect to the processing of domestic articles.

ARTICLE V

Articles the growth, produce or manufacture of the United States of America or the Kingdom of the Netherlands, shall, after importation into the other country, be exempt from all internal taxes, fees, charges or exactions other or higher than those payable on like articles of national origin or any other foreign origin.

The provisions of this Article in regard to the granting of national treatment shall not prevent the Netherlands from maintaining the existing differential between imported and domestic articles in connection with the stamping tax for works in gold or silver or from applying the existing regulations in regard to the excise tax on the juices of fresh fruits other than grapes, whether or not fermented, and on molasses and other liquids containing sugar.

ARTICLE VI

1. Neither the United States of America nor the Kingdom of the Netherlands shall establish or maintain any import or export prohibition or restriction on any article originating in or destined for the territory of the other country, which is not applied to the like article originating in or destined for any third country. Any abolition of an import or export prohibition or

restriction which may be granted even temporarily by either country in favor of an article originating in or destined for a third country shall be applied immediately and unconditionally to the like article originating in or destined for the territory of the other country.

2. With respect to the articles enumerated and described in Schedule IV annexed to this Agreement, which are now subject to quantitative restrictions in the Netherlands or the Netherlands Indies, the quantities of such articles originating in the United States of America which shall be permitted to be imported annually into the respective territories, beginning February 1, 1936, shall not be less than those specified in the said Schedule.

3. With respect to articles not specified in Schedule IV, originating in the United States of America, which are now subject to quantitative restrictions in the Netherlands, the quantities permitted to be imported annually, beginning February 1, 1936, shall not be less than those established in the form of percentages of the importations in the basic periods by the published quota decrees in effect on the day of the signature of this Agreement.

4. With respect to articles in which the United States of America has an interest and which are not now subject to quantitative restrictions in the Netherlands, it is agreed that if the Netherlands shall establish any form of quantitative restriction or control of the importation or sale of any such article, there will be allotted to the United States of America a share of the total quantity of any such article permitted to be imported or sold, during a specified period, equivalent to the proportion of the total importation of such article which the United States of America supplied in a basic period prior to the imposition of such quantitative restriction on such article, unless it is mutually agreed to dispense with such allotment. It is understood that in calculating the quotas to be allotted to the United States of America under the provisions of this paragraph, importations into the Netherlands from the Netherlands Indies, Surinam and Curaçao may be omitted from the aforesaid total quantity permitted to be imported or sold and from the aforesaid total importation in the basic period.

5. If the Netherlands imposes or shall hereafter impose on the importation or sale of a specified quantity of any article in which the United States of America has an interest a lower import duty or charge than the duty or charge imposed on importations in excess of such quantity, there will be allotted to the United States of America a share of the total quantity of any such article permitted to be imported or sold at such lower duty or charge, during a specified period, equivalent to the proportion of the total importation of such article which the United States of America supplied in a basic period prior to the imposition of any quantitative restriction on such article, unless it is mutually agreed to dispense with such allotment. It is understood that in calculating the quotas to be allotted to the United States of America under the provisions of this paragraph, importations into the

Netherlands from the Netherlands Indies, Surinam and Curaçao may be omitted from the aforesaid total quantity permitted to be imported or sold at such lower duty or charge and from the aforesaid total importation in the basic period.

6. With respect to articles in which the United States of America has an interest, it is agreed that if a quota for the importation or sale of any such article, or a quota for the importation or sale of a specified quantity of any such article at a lower duty or charge than the duty or charge imposed on importations or sales in excess of such quantity, is or shall be allotted by the Netherlands Indies to any third country, other than the Netherlands, Surinam or Curaçao, there will be allotted to the United States of America a share of the total quantity of such article permitted to be imported or sold, or permitted to be imported or sold at such lower duty or charge, during a specified period, equivalent to the proportion of the total importation of such article which it supplied in a basic period prior to the imposition of such quantitative restriction on such article, unless it is mutually agreed to dispense with such allotment. It is understood that in calculating the quotas to be allotted to the United States of America under the provisions of this paragraph, importations into the Netherlands Indies from the Netherlands, Surinam and Curaçao may be omitted from the aforesaid total quantity permitted to be imported or sold, or permitted to be imported or sold at such lower duty or charge, and from the aforesaid total importation in the basic period.

7. If the Government of the United States of America establishes or maintains any form of quantitative restriction or control of the importation or sale of any article in which the Kingdom of the Netherlands has an interest, or imposes a lower duty or charge on the importation or sale of a specified quantity of any such article than the duty or charge imposed on importations in excess of such quantity, the Government of the United States of America will allot to the Kingdom of the Netherlands a share of the total quantity of such article permitted to be imported or sold, or permitted to be imported or sold at such lower duty or charge, during a specified period, equivalent to the proportion of the total importation of such article which the Kingdom of the Netherlands supplied in a basic period prior to the imposition of such quantitative restriction on such article, unless it is mutually agreed to dispense with such allotment. It is understood that in calculating the quotas to be allotted to the Kingdom of the Netherlands under the provisions of this paragraph, importations into the United States of America from Cuba, the Philippine Islands, the Panama Canal Zone, and the territories and possessions of the United States of America may be omitted from the aforesaid total quantity permitted to be imported or sold, or permitted to be imported or sold at such lower duty or charge, and from the aforesaid total importation in the basic period.

8. If, after February 1, 1937, the Government of the Netherlands should desire to reduce the quota established for any article under the second or the third paragraph of this Article, it shall give at least thirty days' advance notice to the Government of the United States of America, and shall give sympathetic consideration to any suggestion or request which the latter Government may make with respect to the proposed action; and if an agreement with respect thereto is not reached within thirty days following receipt of the aforesaid notice, the Government of the United States of America shall be free, within fifteen days after the expiration of the aforesaid period of thirty days, to terminate this Agreement in its entirety on thirty days' written notice.

9. The quantity allotted to the United States of America for any article on which a quota is established under the second or the third paragraph of this Article shall not in any case be reduced unless the global quota for that article is also reduced in the same proportion. If the global quota for any such article shall at any time be increased, the quantity allotted to the United States of America shall, after February 1, 1937, be increased in the same proportion, unless it is mutually agreed to dispense with such allotment. The term "global quota" means the total quantity or value of an article permitted to be imported from all foreign countries.

10. With respect to the import quotas, which are now in effect or which may hereafter be established by either the United States of America or the Kingdom of the Netherlands, each Government will take appropriate measures to facilitate as much as possible the exhaustion of such quotas. Any representations which either Government may make with a view to effectuating this purpose shall be given the most sympathetic consideration by the other Government.

11. Sympathetic consideration will be given by either Government to any request which the other Government may make for a readjustment of the quota allotment for any article or to any request or representation with respect to any other matter relating to quotas or other quantitative restrictions.

ARTICLE VII

With respect to the articles enumerated and described in Schedules I and II, no prohibitions, import quotas, import licenses, or any other form of quantitative regulation, whether or not operated in connection with any agency of centralized control, shall be imposed by the Kingdom of the Netherlands and the United States of America, respectively.

The foregoing provision shall not apply to quantitative restrictions in whatever form imposed by either country on the importation or sale of any article the growth, produce or manufacture of the other country in conjunction with governmental measures operating to regulate or control the production, market supply, or prices of like domestic articles, nor shall it apply to such

necessary measures as may be adopted in extraordinary and abnormal circumstances to protect the vital economic or financial interests of the country. Whenever either Government establishes or changes any restriction authorized by this paragraph, it shall notify the other Government and shall afford such other Government an opportunity to consult with it in respect of such action; and if, objection being made to such action, an agreement with respect thereto is not reached within thirty days following receipt of the aforesaid notice, such other Government shall be free within fifteen days after the expiration of the aforesaid period of thirty days to terminate this Agreement in its entirety on thirty days' written notice.

The first paragraph of this Article shall not prevent the application of the quantitative restrictions in the form of quotas provided for in Schedule I nor the application of the quantitative restrictions in the form of quotas which are specified in Schedule IV for the articles enumerated and described therein.

ARTICLE VIII

In the event that the United States of America or the Kingdom of the Netherlands establishes or maintains a monopoly for the importation, production or sale of an article or grants exclusive privileges, formally or in effect, to one or more agencies to import, produce or sell an article, the Government of the country establishing or maintaining such monopoly, or granting such monopoly privileges, shall, in respect of the foreign purchases of such monopoly or agency, accord the commerce of the other country fair and equitable treatment. In making its foreign purchases of any article such monopoly or agency shall, within the quantitative limitations permitted by other provisions of this Agreement, be influenced solely by competitive considerations, such as price, quality, marketability, and terms of sale.

ARTICLE IX

In the event that a wide variation occurs in the rate of exchange between the currencies of the United States of America and the Kingdom of the Netherlands, the Government of either country, if it considers the variation so substantial as to prejudice the industries or commerce of the country, shall be free to propose negotiations for the modification of this Agreement; and if an agreement with respect thereto is not reached within thirty days following receipt of such proposal, the Government making such proposal shall be free to terminate this Agreement in its entirety on thirty days' written notice.

ARTICLE X

Each Government will accord sympathetic consideration to such representations as the other Government may make regarding the operation of customs regulations, the observance of customs formalities, and the appli-

cation of sanitary laws and regulations for the protection of human, animal or plant health or life.

If either Government makes representations to the other Government in respect of the application of any sanitary law or regulation for the protection of human, animal or plant health or life, and if there is disagreement with respect thereto, a committee of technical experts on which each Government will be represented shall, on the request of either Government, be established as soon as possible to consider the matter and to submit recommendations to the two Governments.

Whenever practicable each Government, before applying any new measure of a sanitary character, will consult with the Government of the other country with a view to insuring that there will be as little injury to the commerce of the latter country as may be consistent with the purpose of the proposed measure. The provisions of this paragraph do not apply to actions affecting individual shipments under sanitary measures already in effect or to actions based on pure food and drug laws.

ARTICLE XI

The provisions of this Agreement relating to the treatment to be accorded by the United States of America or the Kingdom of the Netherlands to the commerce of the other country do not apply to advantages now accorded or which may hereafter be accorded to neighboring states in order to facilitate frontier traffic, or to advantages resulting from a customs union to which either country may become a party so long as such advantages are not extended to any other country.

Nothing in this Agreement shall be construed to prevent the adoption of measures prohibiting or restricting the exportation or importation of gold or silver, or to prevent the adoption of such measures as either Government may see fit with respect to the control of the export or sale for export of arms, ammunition, or implements of war, and, in exceptional circumstances, all other military supplies.

Subject to the requirement that, under like circumstances and conditions, there shall be no arbitrary discrimination by either country against the other country in favor of any third country, and without prejudice to Article X, the provisions of this Agreement shall not extend to prohibitions or restrictions (1) relating to public security; (2) imposed on moral or humanitarian grounds; (3) designed to protect human, animal or plant health or life; (4) relating to prison-made goods; or (5) relating to the enforcement of police or revenue laws.

Nothing in this Agreement shall prevent either Government from assessing duties or taxes on certain imported articles on the basis of arbitrary quantities in lieu of actual measurement, as required by laws in force on the day of the signature of this Agreement.

ARTICLE XII

In the event that either Government adopts any measure which, even though it does not conflict with the terms of this Agreement, is considered by the other Government to have the effect of nullifying or materially and considerably impairing any object of the Agreement, the Government which has adopted any such measure shall consider such written representations or proposals as the other Government may make with a view to effecting a mutually satisfactory adjustment of the matter. If no agreement is reached with respect to such representations or proposals within thirty days after they are received, the Government making them shall be free, within fifteen days after the expiration of the aforesaid period of thirty days, to terminate this Agreement in its entirety on sixty days' written notice.

ARTICLE XIII

Except as otherwise provided in the second paragraph of this Article, the provisions of this Agreement relating to the treatment to be accorded by the United States of America and the Kingdom of the Netherlands, respectively, to the commerce of the other country, shall not apply to the Philippine Islands, the Virgin Islands, American Samoa, the Island of Guam, or to the Panama Canal Zone.

The provisions of this Agreement regarding most-favored-nation treatment shall apply to articles the growth, produce or manufacture of any territory under the sovereignty or authority of the United States of America or the Kingdom of the Netherlands, imported from or exported to any territory under the sovereignty or authority of the other country. It is understood, however, that the provisions of this paragraph do not apply to the Panama Canal Zone.

The advantages now accorded or which may hereafter be accorded by the United States of America, its territories or possessions or the Panama Canal Zone to one another or to the Republic of Cuba shall be excepted from the operation of this Agreement. The provisions of this paragraph shall continue to apply in respect of any advantages now or hereafter accorded by the United States of America, its territories or possessions or the Panama Canal Zone to the Philippine Islands irrespective of any change in the political status of the Philippine Islands.

This Agreement shall not apply to the advantages which the Netherlands and its overseas territories have granted or hereafter may grant to one another nor to the advantages which these overseas territories have granted or hereafter may grant to one another.

ARTICLE XIV

Each Government reserves the right to withdraw or to modify the concession granted on any article under this Agreement, or to impose quantita-

tive restrictions on any such article if, as a result of the extension of such concession to third countries, such countries obtain the major benefit of such concession and in consequence thereof an unduly large increase in importations of such article takes place: Provided, That before either Government shall avail itself of the foregoing reservations, it shall give notice in writing to the other Government of its intention to do so, and shall allow a period of not less than thirty days before such action is taken for reaching an agreement with respect thereto or with respect to such compensatory modifications of the terms of the present Agreement as may be appropriate. If at the end of the aforesaid period of thirty days a satisfactory agreement has not been reached, the Government which proposed to take such action shall be free to do so at any time thereafter, and the other Government shall be free within fifteen days after such action has been taken to terminate this Agreement in its entirety on thirty days' written notice.

ARTICLE XV

The Kingdom of the Netherlands embraces the Netherlands, the Netherlands Indies, Surinam, and Curaçao; wherever the term "Netherlands" is used in this Agreement it refers only to the territory in Europe.

Wherever the term "United States of America" is used in this Agreement, it is understood to embrace the territories of Hawaii and Alaska, and Puerto Rico, as well as continental United States.

ARTICLE XVI

Schedules I, II, III and IV, and the notes included in them, shall have force and effect as integral parts of this Agreement.

ARTICLE XVII

The present Agreement shall be proclaimed by the President of the United States of America and shall be ratified by Her Majesty the Queen of the Netherlands.

Pending ratification of this Agreement by Her Majesty the Queen of the Netherlands, the provisions of Articles I to XVI, inclusive, shall be applied reciprocally, by the United States of America and the Kingdom of the Netherlands on February 1, 1936, and thereafter until the day on which the entire Agreement shall come into force.

The entire Agreement shall come into force one month after the day on which the Netherlands Government has communicated the ratification by Her Majesty the Queen of the Netherlands to the Government of the United States of America and the Government of the United States of America has communicated the proclamation of the President of the United States of

America to the Netherlands Government. The Agreement shall continue in force until January 1, 1939, subject to the provisions of Article I, Article VI, Article VII, Article IX, Article XII, and Article XIV.

Unless at least six months before January 1, 1939, either Government shall have given to the other Government notice of intention to terminate the Agreement on that date, the Agreement shall remain in force thereafter, subject to the provisions of Article I, Article VI, Article VII, Article IX, Article XII, and Article XIV, until six months from the day on which either Government shall have given such notice to the other Government.

In witness whereof the respective Plenipotentiaries have signed this Agreement and have affixed their seals hereto.

Done in duplicate, in the English and Netherlands languages, both authentic, at the City of Washington this twentieth day of December, nineteen hundred and thirty-five.

For the President of the United States of America:

CORDELL HULL [SEAL]

For Her Majesty the Queen of the Netherlands:

LAMPING [SEAL]

[For schedules annexed to agreement, see 50 Stat. 1526 or p. 24 of EAS 100.]

EXCHANGE OF NOTES

The Secretary of State to the Netherlands Director of Trade Agreements

DEPARTMENT OF STATE
WASHINGTON, December 20, 1935

SIR:

I have the honor to make the following statement of my understanding of the agreement reached through recent conversations held at Washington by representatives of the Government of the United States and the Netherlands Government with reference to certain special duties.

These conversations have disclosed a mutual understanding between the two Governments, which is that neither will impose on products of territories of the other Government any antidumping duty or new or additional duty to countervail the payment or bestowal of a bounty or grant, without first giving the other Government, through an informal notice, an opportunity to present representations with respect to the proposed duty. No decision to impose such duty will be made within thirty days after the date of the informal notice, unless an earlier decision is required by law. Any represen-

tations submitted by the other Government will be carefully considered by the Government contemplating the imposition of the duty.

Accept, Sir, the assurances of my highest consideration.

CORDELL HULL
Secretary of State
of the United States of America

The Honorable ARNOLD THEODOOR LAMPING,
Director of Trade Agreements,
Chief of the Netherlands Delegation,
Washington.

The Netherlands Director of Trade Agreements to the Secretary of State

[TRANSLATION]

20 DECEMBER 1935

EXCELLENCY:

I have the honor to acknowledge the receipt of your Excellency's note of today's date containing a statement of Your Excellency's understanding of the agreement reached through recent conversations held at Washington by representatives of the Government of the United States and the Netherlands Government with reference to certain special duties.

These conversations have disclosed a mutual understanding between the two Governments, which is that neither will impose on products of territories of the other Government any antidumping duty or new or additional duty to countervail the payment or bestowal of a bounty or grant, without first giving the other Government, through an informal notice, an opportunity to present representations with respect to the proposed duty. No decision to impose such duty will be made within thirty days after the date of the informal notice, unless an earlier decision is required by law. Any representations submitted by the other Government will be carefully considered by the Government contemplating the imposition of the duty.

I beg to confirm to Your Excellency the agreement thus reached.

I avail myself of the opportunity to renew to Your Excellency the assurances of my highest consideration.

LAMPING
Director of Trade Agreements

WASHINGTON, D.C.

His Excellency MR. CORDELL HULL,
Secretary of State
of the United States of America,
Washington, D.C.